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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTOPHER HERNANDEZ,

Defendant and Appellant.

G051303

(Super. Ct. No. 10HF1594)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County,
J. Michael Beecher, Judge. (Retired judge of the Orange Super. Ct. assigned by the Chief
Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Erica Gambale, under appointment by the Court of Appeal, for Defendant
and Appellant.

No appearance for Plaintiff and Respondent.

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INTRODUCTION

In our prior opinion, we affirmed Christopher Hernandez’s judgment of conviction for willfully harming a child (count 1) and for willfully inflicting cruel or inhuman corporal punishment on a child (count 2), but remanded the matter for resentencing because the trial court did not state its reasons for imposing the upper term for the offense of willfully harming a child. (*People v. Hernandez* (July 23, 2014, G048021) [nonpub. opn.] (*Hernandez I*).) At the resentencing hearing, the trial court reimposed the upper term of six years for Hernandez’s conviction for willfully harming a child. Hernandez appeals.

Appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), setting forth the facts of the case and requesting we review the entire record. Pursuant to *Anders v. California* (1967) 386 U.S. 738 (*Anders*), appointed counsel identified a potential issue to assist us in our independent review. Hernandez was granted 30 days to file written arguments in his own behalf, but did not do so.

We have examined the entire record and counsel’s *Wende/Anders* brief. After considering the entire record, we have found no reasonably arguable issue. (*Wende, supra*, 25 Cal.3d 436.) We therefore affirm.

FACTS

In *Hernandez I*, we set forth the facts as follows:

“In 2010, Hernandez lived with his girlfriend, C.F, and C.F’s 13-month-old daughter, D. On September 2, 2010, C.F. took a shower, leaving D. alone with Hernandez. Minutes later, Hernandez entered the bathroom and told C.F. that D. was not breathing correctly.

“At C.F.’s direction, Hernandez called 911, and the paramedics took D. to the emergency room. Hernandez told C.F. he had dropped D., tried to splash water on her face, and spanked her to try to awaken her. Hernandez told Orange County Sheriff’s

Detective Mike Starnes that D. fell and hit her head; Hernandez stated he had dropped D., and denied shaking her.

“During D.’s 20-day stay in the hospital, four physicians were involved in her care. Dr. Kenneth Kwon, a pediatric emergency room physician, performed an endotracheal intubation because D. was having difficulty breathing. Dr. Kwon also ordered a CAT scan for D.; she was thereafter admitted to the pediatric intensive care unit. Dr. Kwon testified D.’s injuries were due to ‘non-accidental trauma’ and were similar to ‘acceleration or deceleration’ injuries.

“Dr. Todd Lempert, a radiologist, reviewed D.’s MRI and CAT scan results. He determined D. suffered from an interhemispheric subdural hematoma and a frontal subdural hematoma. Dr. Lempert testified D.’s injuries were a ‘classic kind of thing for child abuse’ and consistent with shaken baby syndrome.

“Dr. Ramin Tayani, an ophthalmologist, examined D.’s eyes. He determined D. had hemorrhages in both eyes. Dr. Tayani testified he had noted ‘the diagnos[is] of shaken baby syndrome should be considered highly.’

“Dr. Gary Goodman, a pediatric intensive care physician, took care of D. while she was in the pediatric intensive care unit. Dr. Goodman saw bruises on D.’s back, buttocks, left ear, and thigh. He testified infants ‘can be injured by having them being shaken very hard’ and ‘subdural hematomas and retinal hemorrhages’ are common injuries from being shaken. Dr. Goodman also testified D.’s injuries were similar to rotational force injuries.

“Dr. Janice Ophoven, a pediatric forensic pathologist and pediatric pathologist, testified as an expert for Hernandez. She testified D.’s injuries were from blunt force trauma to her head with resulting complications. Dr. Ophoven also testified D.’s injuries could not have occurred from being shaken without impact.” (*Hernandez I, supra*, G048021, fn. omitted.)

PROCEDURAL BACKGROUND

In *Hernandez I*, we summarized the procedural history of the case as follows:

“Hernandez was charged in an information with one count of willfully harming a child in violation of Penal Code section 273a, subdivision (a) (count 1), and one count of willfully inflicting cruel or inhuman corporal punishment on a child in violation of Penal Code section 273d, subdivision (a) (count 2). The information also alleged, as to counts 1 and 2, that Hernandez inflicted great bodily injury to a child while committing or attempting to commit a felony, within the meaning of Penal Code section 12022.7, subdivision (d).

“The jury found Hernandez guilty of counts 1 and 2, and it found true the enhancement allegation as to both counts. Hernandez filed a motion for a new trial on the ground Dr. Lempert and Dr. Tayani were unqualified to testify about shaken baby syndrome. The trial court denied Hernandez’s motion.

“The trial court sentenced Hernandez to a total prison term of 12 years by imposing the upper term of six years on count 1 and a consecutive six-year term for the attendant enhancement. Pursuant to Penal Code section 654, the court stayed execution of sentence as to count 2 and the attendant enhancement. Hernandez appealed.”
(*Hernandez I, supra*, G048021.)

In *Hernandez I*, we affirmed the judgment, but remanded for resentencing because the trial court failed to state reasons for imposing the upper term sentence on count 1. (*Hernandez I, supra*, G048021.) At the resentencing hearing, the trial court reimposed the six-year upper term sentence for count 1, and stated that circumstances in aggravation relating to the commission of that crime included that the victim was particularly vulnerable (Cal. Rules of Court, rule 4.421(a)(3)) and that Hernandez took advantage of a position of trust or confidence to commit that offense (*id.*, rule 4.421(a)(11)). Hernandez appealed.

ANALYSIS

We have reviewed the record in accordance with our obligations under *Wende* and *Anders*, and we find no reasonably arguable issues on appeal. Hernandez himself has not raised any issues for our review. (*People v. Kelly* (2006) 40 Cal.4th 106, 120, 124.)

DISPOSITION

The judgment is affirmed.

FYBEL, J.

WE CONCUR:

MOORE, ACTING P. J.

ARONSON, J.